

**EXPEDITED PROCESSING REQUESTED:  
RESPONSE AFTER FINAL**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of	) Examiner: Katherine D. Salmon
Yongjun Guo	) Art Unit: 1634
Serial No. 10/789,652	) File Ref: 3882-P03136US01
Filed: March 11, 2004	)
For: "Single Nucleotide	)
Polymorphism in the FGF-3)	
Gene and Methods of Use	)
Thereof"	)

**PETITION FOR EXTENSION UNDER 37 CFR §1.136(A)**

The undersigned hereby petitions for an extension of time of **three (3)** month beyond the time period set in the last office communication. The proper fee under 37 CFR §1.17 is enclosed.

  
Kathleen D. Rigaut, Ph.D, J.D.

**REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. §1.114**

The March 9, 2007 Advisory Action has been carefully reviewed. In view of the following remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset, it is noted that a shortened statutory response period of three months was set forth in the November 9, 2006 Final Official Action. Therefore, the initial due date for response was February 9, 2007. Accordingly, a petition for a 3 month extension of time is presented with this response, which is being filed within the three month extension period.

The present remarks are being filed as part of the submission required under 37 C.F.R. §1.114, in connection with the Request for Continued Examination, which is submitted concurrently herewith.

The Examiner has indicated in the March 9, 2007 Advisory Action that the amendment presented with the February 8, 2007 response to the November 9, 2006 Final Official Action has been entered. However, it is the Examiner's position that the amendments and arguments submitted with the February 8, 2007 response do not place the application in condition for allowance. Specifically, the Examiner contends that the term "comprising" in claim 1 encompasses the sequence of SEQ ID NO: 1 plus any flanking sequence on either side of the fragment. It is the Examiner's position that the specification does not provide an adequate description of the large genus of sequences encompassed by the term "comprising," including "splice variants, homologs and mutations."

Applicants continue to strenuously disagree with the Examiner's position. It is a well-established principle in patent law that the Examiner has the initial burden of presenting evidence or reasons why a person of ordinary skill in the art would not recognize in Applicant's specification disclosure, a description of the invention defined by the claims. In re Wertheim, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). For the reasons of record and those set forth below, it is without question that the Examiner has failed to carry this burden.

As stated in the February 8, 2007 response, the instant specification discloses that SEQ ID NO: 1 can be operably linked to the firefly luciferase gene and affect the transcription and expression of the luciferase gene (see Example II). The specification also teaches that SEQ ID NO: 1 can be contained within a vector and, as stated in claim 3, SEQ ID NO: 1 can be operably linked to a reporter gene. Accordingly, the sequence of the flanking nucleotides to SEQ ID NO: 1 is limitless.

Based on the maintained rejection of the instant claims, it appears that the Examiner is requiring that the flanking sequences to SEQ ID NO: 1 be defined. Such a requirement is unduly restrictive and nonsensical in view of the instant invention. For example, SEQ ID NO: 1 can be operably linked at its 3' end to drive expression of any gene. Defining the sequence flanking SEQ ID NO: 1 on the 3' end would clearly be unduly restrictive.

Applicants also note that the USPTO continuously issues patents with claims which recite nucleic acid molecules comprising a particular SEQ ID NO:. There is no need to further define the sequences which flank the recited sequence. Indeed, U.S. Patents 7,169,968; 7,205,124; 7,193,136; and 7,179,904, all of which were issued this year, recite nucleic acid molecules which comprise a promoter sequence identified with a SEQ ID NO without having to define or describe the flanking sequences. It is wholly unclear to Applicants why the instant application appears to be held to higher and inappropriate written description standard.

In light of the foregoing, Applicants respectfully submit that the instant claims clearly satisfy the written description requirements of 35 U.S.C. §112, first paragraph.

#### **CONCLUSION**

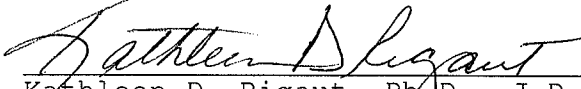
In view of the remarks and amendments presented in the February 8, 2007 Official Action response and the remarks presented herewith, it is respectfully urged that the rejections set forth in the November 9, 2006 Official Action be withdrawn and that this application be passed to issue.

In the event the Examiner is not persuaded as to the allowability of any claim, and it appears that any outstanding

issues may be resolved through a telephone interview, the Examiner is requested to telephone the undersigned at the phone number given below.

Respectfully submitted,  
DANN, DORFMAN, HERRELL AND SKILLMAN  
A Professional Corporation

By

  
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